

Idaho Bar Commission Rules

Governing Admission to Practice and Membership in the Idaho State Bar

*As promulgated by the Board of Commissioners of the Idaho State Bar
and adopted by Order of the Supreme Court of the State of Idaho.*

SECTION VI

*Client Assistance Fund

**(Fund name changed throughout Section VI on 12-5-02)*

RULE 600. Establishment of Fund

- (a) **Purpose.** There is established, as provided in *Idaho Code* Sec. 3-409, the Client Assistance Fund of the Idaho State Bar for the purposes of maintaining the integrity and protecting the good name of the legal profession by reimbursing claimants for losses caused by the dishonest conduct of a lawyer.
- (b) **Effective Date.** These Rules shall be effective for claims filed with the Board after July 1, 1986. The Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto; provided, however, that any claims pending on the effective date of this Rule shall be processed under the prior Rules.

RULE 601. Definitions. As used in the Rules relating to the Client Assistance Fund, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implications.

- (a) **Board.** "Board" means the duly elected governing body of the Idaho State Bar.
- (b) **Claim.** "Claim" means a written application to the Board of Commissioners seeking reimbursement from the Client Assistance Fund of a loss resulting from a lawyer's dishonest conduct.
- (c) **Claimant.** "Claimant" means an individual, or in the event of his or her death or incapacity, his or her duly appointed personal representative or spouse, who or entity which has sustained a loss as a result of a lawyer's dishonest conduct and has filed a claim as defined in subsection (b) of this Rule.
- (d) **Court or Supreme Court.** "Court" or "Supreme Court" means the Supreme Court of the State of Idaho.
- *(e) **Dishonest Conduct.** "Dishonest Conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:
 - (1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Idaho Rules of Professional Conduct; or
 - (2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

**(Section (e) added 4-1-91)*

- (f) **Executive Director or Director.** "Executive Director" or "Director" means the chief administrative officer of the Idaho State Bar.
- (g) **Fund.** "Fund" means the Client Assistance Fund.
- (h) **Lawyer.** "Lawyer" means a person who has met the qualifications for and been duly admitted to the practice of law in the State of Idaho and is actively engaged in the practice of law within this state.

- (i) **Loss.** "Loss" means the loss of money or property occasioned by the dishonest conduct of a lawyer occurring during the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.
- (j) **Rules or These Rules.** "Rules" or "These Rules" means Rules 600 through 616 governing the Client Assistance Fund.

***RULE 602. Appropriation to and Maintenance of Fund.**

The Board of Commissioners shall provide funding necessary for the proper payment of claims and the costs of administration of the Fund from an assessment on the members of the Idaho State Bar; from donations made to the Fund; through accrual of interest on such monies as are held in the Fund; and, if deemed feasible by the Board, through the purchase of insurance.

- *(a) **Assessment.** Each fiscal year following establishment of the Fund, the Board shall assess an amount not to exceed \$20.00 per member, regardless of category of membership, to reimburse the Fund for any claims paid during the prior fiscal year, or until the Fund reaches a total amount of \$500,000.00. In the event such assessment does not fully reimburse the Fund, the Board shall continue to assess each year an amount not to exceed \$20.00 per member until the Fund reaches a total sum of \$500,000.00.

- *(b) **Investment.** All monies or other assets collected for the Fund shall be held in a separate account in the name of the Fund, subject to the written direction of the Board; provided, however, the Board may prudently invest such portions of the funds as may not be needed currently to pay losses.

- (1) **Accrued Interest.** Interest accrued or accruing on the monies held in the Fund may be maintained in the Fund, although the total amount of the Fund exceeds \$500,000.00.

**(Sections (a) & (b) amended 4-1-91 and 2-7-97)*

- (c) **Insurance.** Insurance to cover extraordinary losses in excess of the assets of the Fund may be purchased by the Board, if the same is deemed prudent and feasible by the Board.

**(Rule 602 amended 1-1-90)*

RULE 603. Committee on Client Assistance Fund

- *(a) **Establishment and Membership.** The Board of Commissioners shall appoint a five (5) member committee to be known as the "Client Assistance Fund Committee" which shall consist of members of the Idaho State Bar, in good standing, and non-lawyer members.

- (1) **Terms of Office.** Members of the Committee shall serve for terms of three (3) years provided that initial appointments shall be made as follows:

- (A) One (1) member of the Idaho State Bar, in good standing, and one (1) adult Idaho citizen who is a person of good moral character and reputation who is

not a lawyer, appointed for an initial term ending June 30, 1987.

- (B) One (1) member of the Idaho State Bar, in good standing, and one (1) adult Idaho citizen who is a person of good moral character and reputation who is not a lawyer, appointed for an initial term ending June 30, 1988.
- (C) One (1) member of the Idaho State Bar, in good standing, appointed for an initial term ending June 30, 1989.
- (2) **Subsequent Terms.** Subsequent terms of all members shall be for three (3) years. The composition of the Committee shall be maintained by the appointment of three (3) lawyers and two (2) nonlawyers of like credentials as those appointed to initial membership on the Committee.
- (3) **Officers.** The Board shall designate one (1) member of the Committee as Chairman and one (1) member as vice-chairman. The Chairman shall be responsible for calling and presiding over meetings of the Committee.
- (4) **Duties and Responsibilities.** The Committee shall have the following duties and responsibilities:
 - (A) To receive and evaluate claims;
 - (B) To conduct hearings on claims;
 - (C) To submit findings and recommendations, together with the record of the hearing, to the Board of Commissioners;
 - (D) To adopt additional rules of procedure not inconsistent with these Rules, subject to approval by the Board of Commissioners;
 - (E) To provide a full report at least annually to the Board of Commissioners and make other reports and publicize its activities as the Committee may deem advisable; and
 - (F) To prosecute claims for restitution to which the Fund is entitled.
- (5) **Meetings.** The Committee shall meet no less than once per year upon call of the Chairperson provided that the Chairperson shall call a meeting at any reasonable time at the request of at least two (2) members of the Committee.
- (6) **Quorum.** Three (3) members of the Committee shall constitute a quorum. All decisions of the Committee must be by majority vote of those present.
- (7) **Compensation and Expenses.** The members of the Client Assistance Fund Committee shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties under these Rules.
- (8) **Vacancies.** Vacancies during a term shall be filled by the board for the remainder of the unexpired term. The Board may also appoint temporary members to serve during the absence or recusal of permanent members of the committee.
- (9) **Conflict of Interest.** A member of the Committee who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

**(Section (a) amended 4-13-94 - effective 7-1-94)*

RULE 604. Recognition of Claims

- (a) **Claim.** The claimant shall file or cause to be filed a claim for reimbursement and contains the following information:
 - (1) The name and address of the lawyer causing the loss;
 - (2) The amount of the loss claimed;
 - (3) The date of the loss or period of time during which the alleged loss occurred;
 - (4) Name and address of the claimant; and

(5) A general statement of facts relative to the claim.

- (b) **Form.** The claim shall be verified, submitted upon a form prepared by the Board of Commissioners, and shall have endorsed upon its face in bold type the following statement: "In establishing the Client Assistance Fund, the Idaho State Bar did not create, nor acknowledge, any legal responsibility for the acts of individual lawyers in their practice of law. All reimbursements of losses from the Client Assistance Fund shall be a matter of grace resting in the sole discretion of the Board of Commissioners of the Idaho State Bar administering the Fund and not as a matter of right. No client or member of the public shall have any right in the Client Assistance Fund as a third-party beneficiary or otherwise unless an award thereof shall have been made by the order of the Board of Commissioners of the Idaho State Bar."
- (c) **Time of Filing.** The claim shall be filed no later than three (3) years after the claimant knew or should have known of the dishonest conduct of the lawyer.
- (d) **Place of Filing.** The claim shall be filed with the Executive Director of the Idaho State Bar who shall promptly refer the claim to the Chairman of the Client Assistance Fund Committee.
- (e) **Losses not Reimbursable.** The following losses shall not be reimbursable:
 - (1) Losses of spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;
 - (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby; including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
 - (3) Losses of any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract.
- (f) **Special Circumstances.** In cases of extreme hardship or special and unusual circumstances, the Committee may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

RULE 605. Processing Claims

- (a) **Evaluation of Claim.** All claims shall be evaluated by or under the authority and direction of the Client Assistance Fund Committee, which may:
 - (1) disregard the matter for failure to properly file or to state a recognizable claim under these Rules; or
 - (2) initiate an investigation of the claim.
- (b) **Investigation of Claim.** In the event the Committee initiates an investigation of the claim, it shall notify the lawyer against whom claim is made of the claim and request from the Professional Conduct Board a report of its investigation, if any, of the lawyer's conduct.
 - (1) **Lawyer Response.** The lawyer shall have twenty-one (21) days from the date the claim is served upon him or her to file a written, verified response to the claim.
 - (2) **Report of Professional Conduct Board.** The Board shall provide, or cause to be provided, a report to the Committee:
 - (A) forwarding the files containing the results of its investigation, if any, and the final disposition of the matter before the Board;
 - (B) advising that no investigation has been, or will be undertaken.
 - (3) **Time for Filing Report.** The report of the Professional Conduct Board shall be filed with the Chairman of the Committee within sixty (60) days following receipt of the request.
 - (4) **Failure to Timely File Report.** If the Professional Conduct Board fails timely to file the requested report or reports that

there has been, and will be no investigation, the Committee may proceed with such investigation as it deems appropriate to determine the matter before it.

- (c) **Hearing.** In the event the claim is scheduled for hearing, the hearing shall be conducted in the manner usual to the District Courts of the State of Idaho and may be continued from time to time as the Committee, in its discretion, may permit.

(1) **Place of Hearing.** The lawyer has the right to have the hearing held in the county of his or her residence provided he or she has requested the same in his or her response to the claim; otherwise, the hearing shall be at the place designated by the Chairman of the Client Assistance Fund Committee.

(2) **Notice.** The Chairman shall give, or cause to be given, notice to the claimant and lawyer stating the date, time and place of the hearing. The notice shall also advise the parties of their right to be represented by counsel, to present documents and witnesses on their own behalf, and to cross-examine the witnesses presented by the opposing party.

- (d) **Decision.**

(1) **Notice of Dismissal.** In the event the Committee determines that the claim is not in proper form or fails to state an essential element to state a claim or, from its preliminary investigation it is clear that the Fund is inapplicable, it shall notify the claimant of its decision, stating the reasons for the action taken.

(A) **Request for Review.** The claimant may request, in writing, a review of the Committee's determination, stating the reasons for the request.

(B) **Time of Filing.** The request for reconsideration shall be filed within fourteen (14) days following the receipt by the claimant of notice under this Rule.

(C) **Service of Request.** The written request shall be served upon the Chairman of the Committee and the affected lawyer as provided in Rule 614.

(D) **Failure to Timely Request.** If the claimant fails to make a request or the request is denied, the decision of the Committee is final.

(2) **Recommendations of Committee.** The Committee shall file a report, containing its findings and recommendations, together with the record of its proceedings and any briefs submitted by the parties, with the Board of Commissioners. The Recommendations may include dismissal of the claim or allowance, in whole or in part, of the claim.

(A) **Finding Dishonest Conduct - Effect.** The Committee, for good cause, may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

(B) **Manner and Order of Payment.** A recommendation that the claim or claims be allowed shall include a determination of the manner and order of payment.

(C) **Time for Filing.** The Committee's report shall be filed with the Board within twenty-one (21) days following conclusion of the hearing.

(D) **Service of Report.** The Chairman of the Committee shall serve, or cause to be served, a copy of the report upon the Board of Commissioners, claimant and the lawyer as provided in Rule 614.

(3) **Exceptions.** Either the claimant or the lawyer may file exceptions to the findings and recommendations of the Committee with the Executive Director, who shall forward the entire record of the proceedings before the Committee, together with its findings and recommendations and the exceptions, if any, to the Board of Commissioners.

(A) **Time for Filing.** Exceptions, if any, shall be filed by the parties within fourteen (14) days following service of the Committee's findings and recommendations.

(4) **Review by Board.** Review of the matter shall be on the record unless the Board, in its discretion, determines the appearance of the parties, briefing, or oral argument before the Board is required. In the event the Board so determines, the Chairman shall set the date for the appearance, briefing or oral argument and direct the Executive Director to serve a notice of the date, time and place for appearing or filing on the parties.

(5) **Board Decision.** Following its review, the Board shall make final findings and recommendations which shall:

(A) affirm the Committee's report;

(B) reject the Committee's report;

(C) modify the Committee's report;

(D) remand the matter to the Committee for further investigation or hearing.

(6) **Notice of Board's Decision.**

(A) **Filing and Service.** The Board shall file its Findings and Recommendations with the Executive Director and cause the Director to serve copies of its final findings and recommendations on the parties.

(B) **Time for Filing.** The Board's decision shall be filed within twenty-eight (28) days following conclusion of its review.

*(7) **Review by Court.** Either party to the proceeding may file exceptions to the findings and recommendations of the Board.

(A) **Time for Filing.** The request for review and any exceptions shall be filed within fourteen (14) days following service of the Board's decision upon the parties.

(B) **Place for Filing.** The request for review and any exceptions shall be filed with the Clerk of the Supreme Court.

*(8) **Review by Court.** After the filing of the record and exceptions, if any, with the Supreme Court, the proceedings shall be in accordance with the following procedures:

(A) **No Exceptions.** In the event no exceptions to the findings and recommendations of the Board are filed, the Supreme Court shall promptly enter an appropriate order unless the Court, in its discretion, determines that submission of briefs and oral argument are required, in which event the Court shall notify the parties of the dates and times for submission of briefs and the date of oral argument.

(B) **Exceptions.** In the event exceptions to the findings and recommendations of the Board are filed, the party seeking review shall file an opening brief with the Clerk of the Supreme Court within twenty-eight (28) days following the date the exceptions were filed with the Court. A responding brief shall be filed within twenty-one (21) days after the service of the opening brief. Any reply brief shall be filed within fourteen (14) days after service of the responding brief. Oral argument, if desired by the Supreme Court, shall be at a time and place scheduled by the Court. Following the conclusion of oral argument, the Court shall promptly enter an appropriate order.

*(Sections (d)(7) & (8) amended 9-19-96)

*(9) **Effect of Award.** In the event the Supreme Court enters an order approving an award, such order shall constitute a judgment against the subject lawyer(s), enforceable as provided by law, unless the Court order states otherwise.

*(Section (d)(9) added 9-19-96)

***RULE 606. Limitations on Amount of Reimbursement.**

The maximum amount which any one claimant may recover from the Fund arising from an instance or course of dishonest conduct by the lawyer is \$15,000.00.

*(Rule 606 amended 4-1-91)

RULE 607. Method of Payment

(a) **Assignment by Claimant.** If a claim is allowed, in whole or in part, and prior to payment of the claim, the claimant shall be required to execute a written assignment to the Fund of all rights of the claimant against the lawyer, or his or her estate, to the extent of the reimbursement authorized by the Board.

- (1) The assignment shall specifically state that the Fund shall have no right to receive anything from the lawyer or his or her estate until the Claimant has been reimbursed the full amount of the claim allowed by the Board on account of the lawyer's dishonest act.

*(Section (a) amended 4-1-91)

(b) **Prompt Payment.** Upon receipt of the written assignment referred to in subsection (a) of this Rule, the Board shall promptly pay to the claimant the amount determined reimbursable under these Rules.

RULE 608. Subrogation

(a) **Subrogation Rights.** In the event the Board authorizes payment in whole or in part of a claim, the Client Assistance Fund shall be subrogated to the amount of any such payment and may recover the same either by a suit against the lawyer or in the event of his or her death, insolvency, or disability, against his or her personal representative or other persons administering his or her estate.

- (1) **Action by Fund.** The Client Assistance Fund Committee may bring such action as is deemed advisable against the lawyer, or the lawyer's estate and shall advise the claimant of its action. The claimant may then join in such action to recover losses in excess of the amount of the reimbursement from the Fund.
- (2) **Action by Claimant.** Should the claimant bring an action directly against the lawyer or the lawyer's estate for recovery of losses not reimbursed by the Fund, he or she shall promptly notify the Committee of the filing of such action.
- (3) **Cooperation.** The claimant is expected to cooperate in any effort the Committee undertakes to achieve reimbursement for the Fund.

RULE 609. Legal Rights to Payment from Fund.

No person shall have any right to payment from the Fund as a claimant, third-party beneficiary or otherwise.

RULE 610. Immunity. Members of the Board, Client Assistance Fund Committee, the Executive Director and their respective staffs shall be immune from civil suit and damages for any conduct or occurrence in the course of or arising out of performance of any official duties in connection with these Rules.

RULE 611. Confidentiality.

(a) **Claims and Proceedings.** All claims, proceedings and reports involving claims for reimbursement shall be kept confidential until and unless the Committee authorizes reimbursement to the Claimant.

(b) The Committee, in its sound discretion, may seal all or part of the record of a claim to protect the claimant's privacy.

*(Sections (a) & (b) amended 4-1-91)

(c) **Authorized Disclosure.** This Rule shall not be construed to deny access to relevant information by professional discipline agencies or other law enforcement authorities as the Committee shall authorize, or the release of statistical information which does not disclose the identity of the lawyer or the parties.

(d) **Notice to Parties.** Both the claimant and the lawyer shall be advised of the status of the Committee's consideration of the claim and shall be informed of the final determination.

RULE 612. Compensation for Representing Claimants.

Except as approved by this Committee, no lawyer shall charge for or accept compensation for prosecuting a claim on behalf of a claimant.

RULE 613. Additional Rules of Procedure.

(a) **Record Availability.** The record of a hearing shall be made available to the parties, at their expense, on written request made to the Executive Director of the Idaho State Bar. The record shall not be made available to the public unless the provisions of Rule 611 of these Rules is determined not to apply.

(b) **Time Requirements.** Except as is otherwise provided in these Rules, the time in which any act or any thing is to be done or performed is not jurisdictional.

(c) **Rules of Civil Procedure.** Except as specifically adopted or referred to in these Rules, the provisions of the *Idaho Rules of Civil Procedure* shall not apply in matter relating to the Client Assistance Fund.

(d) **Evidence.** A certified copy of a lawyer discipline order or a criminal conviction shall be deemed conclusive evidence that the lawyer committed the underlying conduct.

*(Section (d) amended 4-1-91)

(e) **Standard of Proof.** Any issue of fact shall be proved by a preponderance of the evidence.

RULE 614. Service

(a) **Claims and Petitions.** Service of claims and petitions under these Rules shall be made by certified mail, return receipt requested, to the lawyer's address as filed with the Idaho State Bar. In the event service cannot be made upon a lawyer, either because the address on file with the Idaho State Bar is no longer effective or because the lawyer fails or refuses to accept delivery of mail at that address, service will be deemed complete fourteen (14) days after reasonable notice by publication in *The Advocate*.

*(Section (a) amended 3-31-00)

(b) **Answers, Responses and Other Papers.** Service of answers and responses and other papers under these Rules shall be made in conformance with Rule 5(a), (b) and (f) of the *Idaho Rules of Civil Procedure*.

(c) **Number of Copies.** All pleadings and papers to be filed or served consist of an original and six (6) copies.

RULE 615. Subpoena Power, Witnesses, Pre-trial Procedures

(a) **Subpoena.**

- (1) **Power to Issue.** Pursuant to the authority of Title 3, Chapter 4, *Idaho Code* the power to issue subpoenas, for the purposes stated in Rule 45 of the *Idaho Rules of Civil Procedure*, in proceedings under these Rules under the circumstances specified, is granted as follows to any member of the Board of Commissioners and any member of the Client Assistance Fund Committee.

- (2) **No Blank Subpoenas.** No subpoena issued under this Rule shall be issued in blank. Each person authorized to issue subpoenas shall notify the Chairman of the Client Assistance

Fund Committee of each subpoena issued and cause a copy of such subpoena issue to be inserted in the record.

- (3) **Issue in Name of Board.** All subpoenas shall be issued in the name of the Board of Commissioners of the Idaho State Bar.
- (4) **Issuance on Behalf of the Parties.** Either party may have subpoenas issued on their behalf, upon reasonable and timely request filed with the Executive Director of the Idaho State Bar.
- (5) **Failure to Comply with Subpoena.** Failure to comply with any subpoena issued as provided in this Rule shall subject the party served therewith to any and all procedures and/or penalties provided by law and particularly provided under *Idaho Code* Sec. 3-414, Rule 45(f), *Idaho Rules of Civil Procedure*; and Title 7, Chapter 6, *Idaho Code*, or as is otherwise provided by law. The District Court of the judicial district in which the attendance or production is required, upon the petition of either party, shall enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Witness fees and mileage shall be paid in the same manner as in District Court proceedings.
- (6) **Oaths and Affirmations.** Any member of the Board of Commissioners and any member of the Client Assistance Fund Committee in matters pending before it may administer oaths and affirmations.
- (b) **Discovery.**
 - (1) **When Permitted.** Discovery shall be permitted as provided by the *Idaho Rules of Civil Procedure*.
 - (2) **Disputes.** Disputes concerning the scope and other aspects of discovery shall be determined by the Chairman of the Client Assistance Fund Committee before which the matter is pending. All discovery orders by the Chairman are interlocutory and may not be appealed prior to the entry of the final order.
 - (3) With the approval of the Chairman of the Committee, testimony may be taken by deposition or by commission if the witness is not subject to serve of subpoena or is unable to attend to testify at the hearing because of age, illness or other infirmity. A complete record of the testimony so taken shall be made and preserved.
- (c) **Pre-Hearing Conference.** At the discretion of the Chairman of the Committee, a pre-hearing conference may be ordered to consider matters similar to those set forth in Rule 16(a), *Idaho Rules of Civil Procedure*.
- (d) **Protective Requirements.** All subpoena and discovery procedures shall be subject to the protective requirements of confidentiality.

RULE 616. Costs of Fund Administration. In addition to the payment of such claims as may be authorized by the Board pursuant to these Rules, the Board is authorized to pay from the Client Assistance Fund:

- (a) **Expenses.** The necessary expenses incurred for investigations and hearings conducted pursuant to these Rules; and
- (b) **Costs.** Such costs as are necessary for the administration of the Fund.

